STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED March 4, 2014
v DIRK TEAMER, Defendant-Appellee.	No. 315220 Wayne Circuit Court LC No. 11-006795-FH

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	
v TERRANCE BUSH, Defendant-Appellee.	No. 315228 Wayne Circuit Court LC No. 11-006795-FH

Before: MURPHY, C.J., and M. J. KELLY and RONAYNE KRAUSE, JJ.

PER CURIAM.

In these consolidated appeals, the People of the State of Michigan appeal as on leave granted[1] the trial court's order suppressing written statements made by defendants, two Wayne County Sheriff's Deputies, to internal affairs officers investigating defendants' conduct. We reverse and remand.

The charges in this case arise out of defendants' transport of an inmate to a hospital for treatment. The inmate escaped and remained at large for approximately 30 hours before being apprehended. Defendants initially reported to their superior officers that the inmate had been at least partially restrained by leg irons. The day after the escape, Captain Alan Bulifant, then in charge of the Wayne County Sheriff's Office of Internal Affairs Section, reviewed video

[1] *People v Teamer*, ___ Mich ___; 836 NW2d 679 (2013).

surveillance recordings made of the transport, which showed that the inmate was not restrained by either leg irons or handcuffs. In light of the recordings and defendants' reports on the day of the escape, Bulifant suspected defendants of misconduct and possibly criminality. Although Bulifant did not disclose his suspicions to defendants or their commanding officer, Bulifant informed the commanding officer that he wished to meet with defendants the following day for purposes of investigating the escape.

On January 6, 2011, defendants and a Union officer, Corporal Deborah Martin, presented for the meeting with Bulifant. Prior to any discussion, Martin handed to Bulifant "Supplemental Incident Reports" prepared by defendants; these reports differed from their earlier reports in that, inter alia, they stated that the inmate had not been restrained during transport. Attached to the reports were form cover sheets prepared by the Union and signed by defendants stating that they believed they were required to provide information as a condition of continued employment and that they believed the provided information could not be used against them for any criminal proceedings, in reliance on *Garrity v New Jersey*, 385 US 493, 494; 87 S Ct 616; 17 L Ed 2d 562 (1967). Bulifant read the documents, then proceeded to interview defendants. At no time did Bulifant advise defendants of their rights pursuant to *Miranda*[2] or *Garrity*. Bulifant did not advise defendants that they were under suspicion for misconduct or criminality. Bulifant never made threats to discipline the defendants.

Defendants were charged with misconduct in office, MCL 750.505, conspiracy to commit misconduct in office, MCL 750.157a, false reporting of a crime, MCL 750.411a(1)(b), and willful neglect of duty, MCL 750.478. They moved to suppress both their statements on the day of the escape and their statements made on January 6, 2011, arguing that both were provided under threat of job forfeiture. The trial court found the initial reports to have been mere routine incident reports that defendants prepared at the request of their superior after having witnessed a crime, i.e., the inmate's escape. Therefore, they were not generated under the threat of any employment consequence. Defendants do not appeal that decision and we do not further consider it. The trial court found that the January 6, 2011, written statements had not been made under a *direct* threat of job forfeiture, but under a totality of the circumstances, they were nevertheless not voluntarily made. Defendants' raise in their brief an issue regarding the *oral* statements made to Bulifant *after* they submitted the written statements. Because the oral statements were not addressed in the application for leave to appeal, we explicitly do not address them now and express no opinion as to their admissibility.

This Court reviews a trial court's factual findings on a motion to suppress for clear error. *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001). "To the extent that a trial court's ruling on a motion to suppress involves an interpretation of the law or the application of a constitutional standard to uncontested facts, our review is de novo." *Id*.

Initially, defendants' reliance on *Miranda* is misplaced. *Miranda* applies to custodial interrogations. *People v Elliott*, 494 Mich 292, 301; 833 NW2d 284 (2013). "Not all restraints on freedom of movement amount to custody for purposes of *Miranda*." *Howes v Fields*, 565 US

[2] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

___, ___; 132 S Ct 1181, 1189; 182 L Ed 2d 17 (2012). Defendants may have suffered adverse consequences from declining to participate in the meeting or merely leaving, and a reasonable person in their position may have felt not practically at liberty to leave. *Elliot*, 494 Mich at 307. However, defendants were apparently under no *legal* obligation to participate or remain present; they were no *less* at liberty to leave than *any* employee being asked to account for him- or herself before an employer. By defendants' own accounts, to the extent the meeting was coercive, that was because of the possibility of losing their jobs, not from being "literally [unable to] escape" a situation in which an "interrogation will continue until a confession is obtained." *Id*. at 318, quoting *Minnesota v Murphy*, 465 US 420, 433; 104 S Ct 1136; 79 L Ed 2d 409 (1984). The *kind* of coerciveness at issue here is not the kind *Miranda* was intended to protect against, and the fact that defendants' employer happened to be a law enforcement officer does not necessarily mean the meeting was a "custodial interrogation." We hold that *Miranda* has no applicability here.

Furthermore, the fact that defendants were not subjected to a "custodial interrogation" for the purposes of *Miranda* does not necessarily mean that defendants' written statements were voluntary, either. "[T]he protection of the individual under the Fourteenth Amendment against coerced statements prohibits use in subsequent criminal proceedings of statements obtained under threat of removal from office, and that it extends to all, whether they are policemen or other members of our body politic." *Garrity v New Jersey*, 385 US 493, 500; 87 S Ct 616; 17 L Ed 2d 562 (1967). The United States Supreme Court deemed such a situation tantamount to the coercive interrogation practices at issue in *Miranda*. *Id*. at 496-498. Consequently, any self-incriminating statements defendants made under a threat of being discharged from their jobs cannot be used in the instant criminal proceedings against them. See *People v Brown*, 279 Mich App 116, 142; 755 NW2d 664 (2008). The dispute in this matter arises from the fact that, as the trial court found, defendants had not been explicitly threatened with any such adverse employment action at the time they gave their written statements.

There was no coercion apparent at the time defendants made their written statements, at least on the record before us. The record indicates that Bulifant directed defendants to present for an interview, not to draft supplemental reports. The cover sheets defendants attached to their reports actually states that they had asserted their right to silence and been ordered to make statements as a condition of continued employment two days earlier, on the day of the escape itself and before there arose any suspicion of criminal wrongdoing. No matter how reasonable it might have been for defendants to anticipate being asked to incriminate themselves, at the time they drafted their supplemental reports, no such request had actually been made of them. The implications of a summons to a meeting with Internal Affairs, or an equivalent entity or individual within an organization, should not be ignored merely because those implications are not explicitly stated in so many words. However, we do not find such a summons to be

inherently coercive *per se* for purposes of *Garrity*. At the time defendants drafted and, through their Union representative, provided their supplemental reports, they were not yet under an overt threat of incriminating themselves or suffering termination. The reports themselves were, under the totality of the circumstances, voluntary and therefore admissible.

We therefore reverse and remand for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Amy Ronayne Krause